



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 11, 1995

Senator Frank Madla  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

OR95-933

Dear Senator Madla:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33623.

You have received an open records request for "the entire file you now have" concerning complaints you have received regarding the operation of the San Antonio State School. You have submitted to this office as responsive to the request both handwritten and typed notes taken by you and your staff during meetings with citizens concerning the complaints, a large number of "Abuse/Neglect Intake Reports," and an "Interdepartmental Memoranda" pertaining to a particular neglect complaint.

You first inquire whether you may withhold the notes of meetings with private citizens pursuant to section 306.004 of the Government Code. Chapter 306 of the Government Code was enacted in 1987 and governs access to records and communications<sup>1</sup> collected, maintained, and received by members of the legislature and the lieutenant governor as of June 12, 1985. Gov't Code § 306.002. Section 306.004 of the Government Code provides in pertinent part:

(a) To ensure the right of the citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the confidentiality of communications of citizens with a member of the legislature or

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<sup>1</sup>Section 306.001 of the Government Code defines "communication" for purposes of chapter 306:

In this chapter, "communication" includes *conversation*, correspondence, and electronic communication. (Emphasis added.)

the lieutenant governor, the public disclosure of all or part of a written or otherwise recorded communication from a citizen of this state received by a member or the lieutenant governor in his official capacity is prohibited unless:

- (1) the citizen expressly or by clear implication authorizes the disclosure;
- (2) the communication is of a type that is expressly authorized by statute to be disclosed; or
- (3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.

We have examined the notes of the meetings that you have submitted to us in connection with this request and note that several of the conversations recorded in the notes were with the individuals who are now requesting these records. By requesting the notes of conversations in which the requestors participated, we believe the "citizen[s] [have] . . . by clear implication authorize[d] the disclosure" of those records. See Gov't Code § 306.004(a)(1). Consequently, to the extent that the notes pertain to conversations in which the requestors were the only citizens present, those notes must be released to the requestors at this time.<sup>2</sup> However, all of the remaining notes are confidential under subsection (a) of section 306.004 of the Government Code and are therefore excepted from required public disclosure.<sup>3</sup>

You next inquire whether the "de-identified" records of abuse or neglect from the San Antonio State School are deemed confidential under section 48.083 of the Human Resource Code. Section 48.101 (former section 48.083) of the Human Resource Code provides in pertinent part:

- (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:
  - (1) a report of abuse, neglect, or exploitation made under this chapter;
  - (2) the identity of the person making the report; and

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<sup>2</sup>In addition, if the requestors are able to provide your office with express authorization from others who contacted your office to release notes of those individuals' conversations, those records must be released as well.

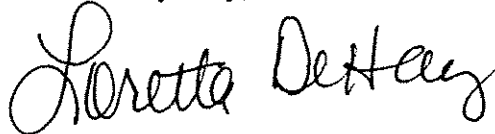
<sup>3</sup>Because we conclude these records are excepted from required public disclosure by section 306.004 of the Government Code, we need not address the extent to which the informer's privilege would otherwise apply to these records.

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

Consequently, the fact that the names of the state school's clients and of the individuals who reported suspected abuse or neglect have been deleted from these records has no bearing on whether these records may be released to the public. Because none of the exceptions to confidentiality listed in section 48.101 apply in this instance, all of the "Abuse/Neglect Intake Reports" are confidential in their entirety pursuant to section 48.101 of the Human Resource Code. You therefore must withhold these records. Similarly, we conclude that because the "Interdepartmental Memoranda" you have submitted to this office was "used or developed in an investigation made under" chapter 48 of the Human Resource Code, this memoranda must also be withheld from the public pursuant to section 48.101.<sup>4</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/RWP/rho

Ref.: ID# 33623

Enclosures: Submitted documents

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<sup>4</sup>Because we resolve this aspect of your request under provisions of the Human Resource Code, we need not address your arguments under section 552.111 of the Government Code and section 464.010(e) of the Health and Safety Code.